

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

KYLE PATTISON TIRE COMPANY LLC;

Clayton County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2012-SW- 10

TO: Kyle Pattison
Manager
Kyle Pattison Tire Company LLC
703 1st Street
Clayton, IA 52049

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Kyle Pattison Tire Company LLC (Pattison Tire Co.) for the purpose of resolving issues related to the historic accumulation of waste tires in a facility owned by Pattison Tire Co.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Alex Moon, Solid Waste Section Supervisor
Iowa Department of Natural Resources
502 E. 9th St.
Des Moines, IA 50319
Phone: 515-281-6807

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319
Phone: 515-281-8889

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455D.23 which authorizes the Director to issuance any order necessary to secure compliance with or prevent a violation of the provisions of Iowa Code chapter 455D, and the rules adopted pursuant to that chapter; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Kyle Pattison Tire Company LLC**

Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B 109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1 Kyle Pattison Tire Company LLC is the holder of waste tire storage permit No 22-WIM-01-96W-STI for a facility located in Sections 7 and 8, Township 93 N, Range 2 W in Clayton County, Iowa. The storage facility is portion of a former silica mine. There are currently approximately 2,676,547 passenger tire equivalents (pte's), as defined by 567 IAC 116.2, stored at the site. The site was first used as a waste tire warehouse in 1990, pursuant to permission from the DNR for such temporary storage.

2. On January 13, 1998, Permit No. 22-WIM-01-96W-STI was first issued to Pattison Bros./Mississippi River Terminal, Inc and authorized the acceptance and storage of up to 520,000 pte's. The permit was valid until January 13, 2003.

3. On June 30, 2004, the site stopped accepting any additional waste tires.

4. On February 7, 2006, the DNR renewed permit No 22-WIM-01-96W-STI in the name of Pattison Tire Co. The permit contained the following special provision:

Special Provision #3. The stockpiling of waste tires at this facility shall not be considered land disposal pursuant to Iowa Code section 455D 11(2) so long as the storage is of a temporary nature. For these purposes, "temporary nature" shall be defined as a plan on file with the Department that explains the future intent in regard to the waste tires that are being stored. A plan update showing the intended use for the waste tires must be submitted at the time of each permit renewal.

With this permit renewal, the Department approves the April 27, 2005 plan prepared by Alliant Energy to evaluate using waste tires as a fuel source for sand drying operation at the mine. Prior to implementing this plan, the permit holder shall submit a permit application for a waste tire processing facility.

5. In January of 2009, Kyle Pattison Tire Company, LLC submitted an application to renew permit No. 22-WIM-01-96W-STI. The application proposed future disposition of the waste tires only in the event that the value of the tires is greater than removal and transportation costs and also suggested that the site might be used for final disposal of the tires, with DNR approval.

6. On May 3, 2010 the DNR denied the application for a permit, alleging noncompliance with financial assurance requirements and the failure to provide a clear plan for future use of the waste tires.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Kyle Pattison Tire Company LLC**

7 Kyle Pattison Tire Company, LLC filed a timely appeal of the permit renewal denial Pursuant to law, the prior permit remains valid while the appeal is pending

8 On June 23, 2010, the DNR met with representatives of Kyle Pattison Tire Company LLC At this time, further financial information was provided to the DNR and options for resolution of this matter were discussed Discussions between the parties have continued since that time

9 Pursuant to a request by the DNR, Kyle Pattison Tire Company LLC retained a third party to conduct a risk assessment in conformance with the risk analysis scope of work presented to the DNR on June 23, 2010 and dated June 15, 2010.

10 Kyle Pattison Tire Company, LLC submitted to the DNR a report entitled Fire Risk Assessment – Tire Storage Area (“Risk Assessment”) dated September 30, 2010 and prepared by Continental Placer, Inc. As part of the Risk Assessment, Continental Placer, Inc recommended that material be piled in front of the tires to restrict access, as set forth on Figure 4 attached to that Risk Assessment. A copy of Figure 4 is also attached to this Administrative Consent Order

11 At this time, the DNR and Kyle Pattison Tire Company, LLC have determined that the permanent disposition of the waste tires currently stored at the Kyle Pattison Tire Company LLC property can best be accomplished through the issuance of a consent order, rather than renewal of the permit and further agree that the permanent disposition of the waste tires should be authorized by this consent order

IV. CONCLUSIONS OF LAW

1 Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director unless the agency has been granted a permit by the Department which allows the dumping or depositing of solid waste on land owned or leased by the agency

2, Iowa Code section 455D 11(2) prohibits the land disposal of waste tires, unless the tire has been processed in a manner established by the department

3 Iowa Code section 455D 11(1)“d” and 567 IAC 117.2 define “tire collector” as, in part, a person who owns or operates a site used for the storage, collection, or deposit of more than five hundred waste tires or an authorized vehicle recycler who is licensed by the state department of transportation pursuant to 321H.4 and who owns or operates a site used for the storage, collection or deposit of more than three thousand five hundred waste tires

4. Iowa Code section 455D 11B and 567 IAC 117.4(2) require a tire collector to obtain a permit from the Department Kyle Pattison Tire Company LLC has stored waste tires pursuant to permit No. 22-WIM-01-96W-SIT

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Kyle Pattison Tire Company LLC**

5. Iowa Code section 455D.11A and 567 IAC 117.7 require a tire collector to post financial assurance to provide for the closure of the waste tire collection facility

V. ORDER

HEREFORE, the DNR orders and Kyle Pattison Tire Company LLC agrees to the following:

1. Kyle Pattison Tire Company LLC is hereby authorized to permanently dispose of all waste tires received prior to July 1, 2010 in the previously approved areas of the mine, as shown on the map in Appendix A, subject to the conditions set forth below. No new waste tires may be stored at the facility and no new areas of the mine shall be authorized for waste tire storage

2. Kyle Pattison Tire Company LLC shall maintain security, implement fire prevention controls, and access controls, including future monitoring in accordance with the Fire Risk Assessment Plan

3. Kyle Pattison Tire Company LLC shall deposit the sum of \$25,000 in a secured trust fund for the purpose of maintaining security, maintenance of the implemented fire prevent controls, access control, and future monitoring in the event that Kyle Pattison Tire Company LLC is no longer in existence or otherwise unable to carry out these obligations. Kyle Pattison Tire Company LLC shall not be required to post or obtain any other form of financial assurance for the disposition of the waste tires in conformance with this consent order

4. Kyle Pattison Tire Company LLC agrees that it shall implement and complete the sealing of the tires *in situ* inside the inactive underground mine in accordance with the specifications set forth in Section 4.1 of the Risk Assessment and Figure 4 that is attached to the Risk Assessment (the "Sealing Specifications")

5. Kyle Pattison Tire Company LLC may at its discretion request approval from the Department of actions that exceed the recommendations set forth in the Sealing Specifications. The request shall detail for the Department's consideration the complete explanation of those efforts. Those efforts may include adding additional sealing material on top of the tires from boreholes drilled through the roof of selected areas of the mine

6. Kyle Pattison Tire Company LLC agrees that it will grant to the Department or its representatives access to the inactive underground mine used for tire storage for the purpose of monitoring compliance with the sealing specifications for the purpose of measuring, photographing, videotaping, or any other scientific or engineering measurement that the Department deems necessary

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Kyle Pattison Tire Company LLC**

7. Kyle Pattison Tire Company LLC agrees to provide the following notifications to the Department:

- a. Notice of Commencement. This notice shall be provided to the Department when Kyle Pattison Tire Company LLC begins to move rock and sand to the tire area of the inactive underground mine at the commencement of the sealing operation.
- b. Notice of Deviation from the Sealing Specifications. This notice shall be provided to the Department if Kyle Pattison Tire Company finds that it must deviate from the Sealing Specifications. The notice must include what caused the deviation and what measures will be taken to provide an equal or better amount of protection as required by the Sealing Specifications.
- c. Notice of Completion. This notice shall be provided to the Department by Kyle Pattison Tire Company LLC when the project is completed.

8. The Notice of Commencement must be sent by Pattison Tire Company LLC to the Department on or before March 1, 2014.

9. The Notice of Completion must be sent by Pattison Tire Company LLC to the Department on or before July 1, 2016.

10. Kyle Pattison Tire Company shall request written authorization from the DNR for any deviation prior to such deviation, unless infeasible. If written authorization is not obtained then any such notice shall explain why written authorization was infeasible in that instance.

11. Following receipt of the Notice of Completion, the Department agrees to issue a notification to Kyle Pattison Tire Company LLC that it has no evidence that the sealing operation does not meet the Sealing Specifications.

12. Receipt of the notification to Kyle Pattison Tire Company LLC that it has no evidence that the sealing operation does not meet the Sealing Specifications completes the obligations of Kyle Pattison Tire Company LLC under the terms of this Order.

13. Both parties agree that humidity, safety conditions, and access issues caused by seasonal busy times for CGB Enterprises will require an extension of deadlines in order to allow inspections to be made or work to be completed in a safe manner.

14. Kyle Pattison Tire Company shall record an affidavit explanatory of title in the deed record of this property to notify future owners of the existence of the waste tires and such affidavit shall indicate that the tires may not be disturbed by a subsequent titleholder without prior authorization from the DNR.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Kyle Pattison Tire Company LLC**

15. All contingency and emergency operations shall be conducted in accordance with the previously approved Emergency Response and Remedial Action Plan (ERRAP), received June 24, 2004, as prepared by Kyle Pattison, in compliance with IAC 567 Chapter 102.14

VI. PENALTY

1. Iowa Code section 455D 24 authorizes the assessment of civil penalties of up to \$10,000 per day of violation of sections 455D 11, 455D 11A, 455D 11B, 455B 11 for the waste tire regulations involved in this matter. Iowa Code section 455B 307(3) authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the solid waste disposal regulations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the assessment of a penalty is not necessary to secure compliance at this time. The DNR reserves the right and authority to seek future penalties in the event of noncompliance with this administrative consent order. Any such penalties will be pursued through the issuance of a separate administrative or judicial order.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Kyle Pattison Tire Company LLC. For that reason Kyle Pattison Tire Company LLC waives its rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B 307 and 455D 25. Total compliance with all provisions of Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Kyle Pattison Tire Company LLC



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 15 day of
April, 2012.



KYLE PATTISON, MANAGER
Kyle Pattison Tire Company LLC

Dated this 26 day of
March, 2012.

Field Office #1; VIC